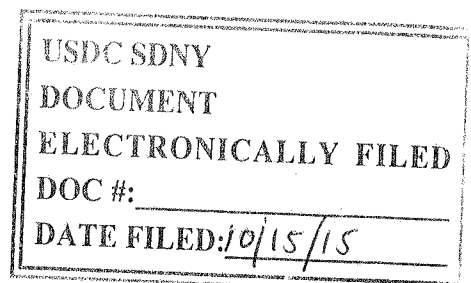


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



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DIAL CORPORATION, *et al.*,

Plaintiffs,

-against-

NEWS CORPORATION, *et al.*,

Defendants.

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WILLIAM H. PAULEY III, District Judge:

13cv6802

MEMORANDUM & ORDER

By Memorandum & Order dated June 18, 2015, this Court granted Plaintiffs' motion for class certification under Rule 23(b)(3), and denied their motion for the appointment of five law firms—Kellogg, Huber, Hansen, Todd, Evans & Figel PLLC (“Kellogg Huber”), McKool Smith, P.C. (“McKool Smith”), Kramer, Levin, Naftalis and Frankel LLP (“Kramer Levin”), Susman Godfrey LLP (“Susman Godfrey”), and Berry Law PLLC (“Berry”)—as joint lead counsel. With the twin goals of efficiency and economy in mind, this Court directed Plaintiffs to propose no more than two law firms to serve as class counsel. (See ECF No. 243.)

Undeterred, Plaintiffs' counsel renewed their request for the appointment of all five law firms as joint lead counsel by letter dated June 24, 2015. (See ECF No. 245.) On June 26, 2015, this Court denied Plaintiffs' counsel's renewed request and reiterated that it would “appoint not more than two[.]” (ECF No. 249.) By a one-sentence letter dated July 9, 2015, Susman Godfrey informed this Court that Plaintiffs' counsel had conferred and now proposed the appointment of Susman Godfrey and Kellogg Huber as co-lead counsel consistent with this Court's earlier Orders. (See ECF No. 256.) Satisfied that its message was received, this Court appointed Susman Godfrey and Kellogg Huber as co-lead counsel on July 10, 2015. (See ECF

No. 257.)

However, on September 16, 2015, a Susman Godfrey partner and two Kramer Levin partners appeared for a pre-motion conference. When this Court inquired why Kramer Levin partners were present, it received an oblique response that they were there to “observe and to assist[.]” (Sept. 16, 2015 Tr. at 3.) As the conference ended, a Kramer Levin partner volunteered a surprising disclosure: that concurrent with their proposal to appoint Susman Godfrey and Kellogg Huber as co-lead counsel, all five law firms had, in his words, “reached an agreement that I will just make public now, because I want to be fully open . . . about what we were doing in this case here, given that . . . the lead counsel, which is now Susman Godfrey and Kellogg Huber . . . has agreed that we should be the lead trial counsel.” (Sept. 16, 2015 Tr. at 20.) Because that side agreement appeared to circumvent prior Orders, this Court directed Plaintiffs’ counsel to produce it for in camera review.

The following day, Susman Godfrey and Kellogg Huber, as co-lead counsel, submitted a letter attempting to justify their actions, and attached a Joint Representation and Administration Agreement dated July 24, 2013, and a Management Committee Resolution dated July 8, 2015. The Joint Representation and Administration Agreement is exquisite, and includes the five law firms, as well as the consumer packaged goods named Plaintiffs.

The Management Committee Resolution, adopted the day before Plaintiffs’ counsel’s July 9 letter to this Court proposing Susman Godfrey and Kellogg Huber as co-lead counsel, engineers a work-around of this Court’s prior Orders. Specifically, it provides that Kramer Levin and McKool Smith would act as co-lead trial counsel and co-lead settlement counsel, and that Berry would have a “meaningful role” at trial. But Susman Godfrey and Kellogg Huber omitted any mention of Kramer Levin, McKool Smith, or Berry in their letter

proposing co-lead counsel to the Court.

### DISCUSSION

This Court is cognizant of the potential benefits to the Class in the pooling of Plaintiffs' counsel's resources and individualized expertise. However, it is the duty of this Court to guard against inefficiencies—which is why this Court, on two separate occasions, directed Plaintiffs' counsel to propose no more than two firms as co-lead counsel. That direction was thwarted by all five law firms' unilateral decision to designate Kramer Levin and McKool Smith as co-lead trial counsel and co-lead settlement counsel who will also “argu[e] any opposition to a motion for summary judgment.”

So now, this Court is confounded by a bizarre circumstance of Plaintiffs' counsel's own making. Susman Godfrey and Kellogg Huber, co-lead counsel, have ceded responsibility for summary judgment, trial, and any settlement to Kramer Levin and McKool Smith. And they did so prior to proposing themselves as co-lead counsel. This Court could simply unravel these machinations by either stripping Susman Godfrey and Kellogg Huber of their title as co-lead counsel, or rejecting Plaintiffs' counsel's agreement that Kramer Levin and McKool Smith serve as co-lead trial and settlement counsel. See Fed. R. Civ. P. 23(g)(1)(E) (the court “may make further orders in connection with the appointment” of class counsel).

However, either action might upset the intricate financial arrangements among the consumer packaged goods companies and their counsel, and interfere with the schedule fixed by this Court. Indeed, a firm date for jury selection and trial looms. Thus, this Court adopts a pragmatic approach—Susman Godfrey and Kellogg Huber can keep their title, even if it is just an ornament. And Kramer Levin and McKool Smith can continue in their role as co-lead trial and settlement counsel.

Of course, “[t]he ultimate responsibility to ensure that the interests of class members are not subordinated to the interests of . . . class counsel rests with [this Court].” Maywalt v. Parker & Parsley Petroleum Co., 67 F.3d 1072, 1078 (2d Cir. 1995). This Court reminds Plaintiffs’ counsel of their duty to avoid duplication of effort and multiplication of attorneys’ fees. In view of this Memorandum & Order, Plaintiffs’ counsel’s request for a conference is denied.

Dated: October 15, 2015  
New York, New York

SO ORDERED:

  
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WILLIAM H. PAULEY III  
U.S.D.J.

*All Counsel of Record.*